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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

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OFFICE OF PETITIONS

In re Application of:

D'Amato, et al.

Serial No. 09/899,702

Filed: July 5, 2001

For: ESTROGENIC COMPOUNDS AS  
ANTIANGIOGENIC AGENTS

Art Unit: 1616

Examiner: Qazi, S.

**RENEWED PETITION UNDER 37 CFR 1.137(b)**

Assistant Commissioner for Patents  
Washington, D.C. 20231  
Sir:

The Petition to Revive the above-referenced application filed on August 25, 2003 was dismissed by the Commission in its decision dated December 9, 2003. That decision states that the application became abandoned for failure to timely reply to the final Office Action mailed June 4, 2003. This statement is incorrect.

The application actually went abandoned for failure to timely reply to the Office Action mailed November 29, 2002. A response to that Office Action was due on February 29, 2003. An "Amendment and Response to Office Action" was filed bearing a certificate of mailing dated February 26, 2002 (copy attached hereto). However, that mailing certificate was in error; instead of 2002, it should have said 2003. Thus, the mailing certificate was defective and could not establish a proper date of receipt of the response under 37 CFR 1.8. Thus, one must look to the date that the response was actually received by the Office. The return postcard

I hereby certify that this correspondence is being deposited with the United States Postal Service via First Class Mail to the attention of Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450 on February 3, 2004.

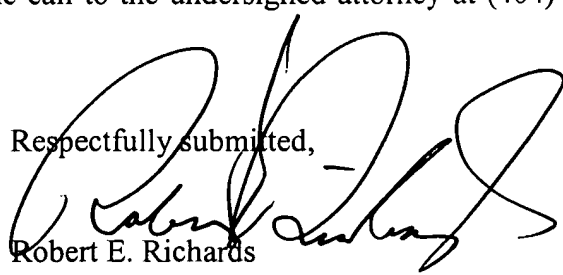
Robert E. Richards - Reg. No. 29,165

for the reply (copy attached hereto) shows the actual receipt date as being March 4, 2003. No extensions of time were filed. Thus, the application actually went abandoned on February 29, 2003. Although subsequent Office Actions were issued by the Examiner in this application, those Office Actions, and the applicants responses thereto, were improper and of no force and effect because the case was abandoned. Thus, the last proper Office Action, that is the Office Action mailed November 29, 2002, in this application was not a final Office Action.

When applicant filed the original Petition to Revive the application, it included a response to the Office Action mailed November 29, 2002. This constituted the proper reply to the last proper Office Action. A Notice of Appeal filed in response to the Office Action mailed November 29, 2002, is not required and would be improper, since it is not a final Office Action. Therefore, the Office should have granted the original Petition to Revive the above-styled application.

Applicants respectfully request reconsideration of the Petition to Revive the present application. In view of the foregoing remarks, applicants maintain that the Petition to Revive this application should have been granted. Such action is respectfully requested. If the Commissioner believes there are any other issues that may be resolved by telephone interview, examiner's amendment or otherwise, a telephone call to the undersigned attorney at (404) 745-2408 is courteously solicited.

Respectfully submitted,

  
Robert E. Richards  
Reg. No. 29,105

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Our Docket: 05213-0910 (43170-260981)



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hereby, acknowledges receipt of the items listed below.

Inventor: **D'AMATO ET AL.**

Serial No. **09/899,702**

Filed: **July 5, 2001**

For: **ESTROGENIC COMPOUNDS AS ANTIANGIOGENIC AGENTS**

Papers Submitted: **Amendment and Response to Office Action**

Express Mail No.:

Attorney: **DEW/dr**

Date Mailed: **February 26, 2003**

Docket: **05213-0910 (43170-260981)**